United Nations A/C.5/59/SR.28

General Assembly
Fifty-ninth session

Official Records

Distr.: General
14 January 2005

Original: English

Fifth Committee

Summary record of the 28th meeting
Held at Headquarters, New York, on Monday, 29 November 2004, at 10 a.m.

Chairman: Mr. MacKay ..... (New Zealand)
Chairman of the Advisory Committee on Administrative and Budgetary Questions: Mr. Kuznetsov

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04-62559 (E)

The meeting was called to order at 10.20 a.m.

Agenda item 106: Financial reports and audited financial statements, and reports of the Board of Auditors (*continued*)

Draft resolution A/C.5/59/L.11

1. *Draft resolution A/C.5/59/L.11 was adopted.*

Agenda item 108: Programme budget for the biennium 2004-2005 (*continued*)

Estimates in respect of special political missions, good offices and other political initiatives authorized by the General Assembly and/or the Security Council: United Nations advance team in the Sudan (*continued*)

Draft resolution A/C.5/59/L.12

2. **Mr. Kozaki** (Japan) said that, according to his delegation's understanding, the Secretariat was to have made a statement containing relevant information in the context of the programme budget for the biennium 2004-2005.

3. **Ms. van Buerle** (Office of Programme Planning, Budget and Accounts) said that, during the informal consultations on the item, such a suggestion had indeed been made by one delegation. With regard to the budget for special political missions in 2005, it had been stated that, if the Security Council made a decision on the Sudan, provision would be made in the programme budget. Since that decision had been made, the draft resolution provided for resources for the continuation of the Sudan mission up to the end of March 2005. The budget for special political missions currently under consideration by the Advisory Committee on Administrative and Budgetary Questions (ACABQ) (whose report was due to be released within the following week) would contain details of requirements for all the 25 special political missions continuing into 2005.

4. *Draft resolution A/C.5/59/L.12 was adopted.*

Agenda item 120: Administration of justice at the United Nations (*continued*) (A/58/300 and A/58/680), (A/59/70, A/59/78, A/59/408, A/59/414 and A/59/449; A/C.5/59/12)

5. **The Chairman**, in accordance with General Assembly resolution 35/213 and in accordance with the decision taken by the Bureau, invited the President of the United Nations Staff Union to address the Committee.

6. **Ms. Waters** (President of the United Nations Staff Union) said that, in view of the fact that the United Nations staff freely gave up their right to invoke national systems of justice, Member States had an obligation to ensure that staff rights were protected and that, when such rights were violated, the recourse procedure was fair and efficient. As indicated in the note by the Secretary-General transmitting the views of other staff representatives (A/C.5/59/4), the justice system of the United Nations was dysfunctional: it could take several years for a case to be heard by the Joint Appeals Board and several more to reach the United Nations Administrative Tribunal. Although the staff representatives supported the recommendations contained in the report of the Office of Internal Oversight Services (OIOS) on the management review of the appeals process at the United Nations (A/59/408), which had been the subject of staff representations to the Administration for the past 10 years, a complete overhaul of the justice system, in which there had been a steady decline, was essential.

7. Four of the conclusions contained in the report had been discussed at the twenty-fifth and twenty-sixth sessions of the Staff-Management Coordination Committee (SMCC). The staff representatives had maintained that managers who did not respond to requests for information by the Administrative Law Unit should be disciplined, since justice delayed was justice denied. Staff representatives had also requested that a three month time limit should be imposed for the proceedings of the panel of Counsel. They had also finally convinced the Administration to allow staff members to use external lawyers before the Joint Appeals Board, thus rectifying the unequal situation in which managers were represented by the Organization's legal machinery, while appellants had to rely on volunteer advocates. An SMCC working group on internal justice, held early in 2001, comprising staff and management representatives from all levels of the justice system, had recommended that the Joint Appeals Board/Joint Disciplinary Committee secretariat should be removed from the Department of Management and placed in an organizational structure that would ensure a separation of the lines of

responsibility between management and the administration of justice. It was ironic that that proposal appeared in the OIOS report under consideration, although it had been rejected by the Administration at the time.

8. The staff representatives did not agree that reforms should be implemented only after staffing shortages had been addressed and the backlog had been eliminated. On the contrary, they believed that, if the Administration tackled the question of internal justice, way would be found to deal with the backlog in a timely manner. The staff representatives supported the proposed amendment to the Staff Rules whereby the Secretary-General would approve an appellant's access to the Administrative Tribunal, should the Administration opt for silence as respondent. The rule should be amended immediately. In most cases, the action of the Joint Appeals Board merely delayed justice for the staff, since it only made recommendations. Rather than attempting to defend cases that were clearly indefensible, the Organization should either settle them immediately or allow them to proceed direct to the Administrative Tribunal.

9. Following the adoption of General Assembly resolution 57/307, which requested the Secretary-General, "in consultation with the Ombudsman and staff representatives, to submit detailed proposals on the role and work of the Panel on Discrimination and Other Grievances for consideration by the General Assembly at its fifty-eighth session", the staff representatives had submitted a proposal on their own initiative, yet no attempt had been made by the management to consult on the issue. The Panels had not received the full support of the administration for a variety of valid reasons. Rather than providing support, however, the Administration had chosen to ignore them. They could be abolished only by the General Assembly, which had established the first one in 1977. The best course would be to restructure the Panels so that they enjoyed the confidence of both staff and management. Staff representatives were willing to work out the details of any such restructuring.

10. In the interests of reforming the justice system, she urged the Committee to consider the following proposals: that no further human resources management reforms should be adopted until immediate action was taken to reconstruct the justice system, thus counter-balancing the current lack of accountability measures; that the Administration should undertake a review, in consultation with staff representatives, to determine the cause of the growing number of cases filed for administrative review or with the Joint Appeals Board; that the practice of simply circulating the results of Administrative Tribunal cases should be replaced by a process of jointly reviewing lessons learned in order to identify areas where incorrect decisions had been taken; and that the Board should exercise its powers to conciliate more often so as to avoid protracted litigation, which was demoralizing for staff members and costly for the Administration.

11. She also urged the Committee to recommend a review of other, similar, justice systems to determine whether they might not be appropriate for the Organization. The Grievance Committee of the International Monetary Fund, for example — the equivalent of the United Nation Joint Appeals Board — was chaired by experienced labour management arbitrators. Moreover, since its establishment in 1980, all its decisions had been made unanimously and the Fund's Managing Director had accepted all its recommendations.

12. Lastly, in the interests of enhancing the internal justice system, in accordance with paragraph 16 of General Assembly resolution 57/307, the Staff Union had embarked on the process of identifying qualified legal professionals, with experience in the United Nations system, to form a consulting group. The Union planned to provide retainers for the professionals concerned in exchange for their accepting cases at a significantly reduced rate for United Nations staff. It was hoped that the staff would thus begin to obtain the type of individual attention that their cases merited.

13. **Mr. Al-Ansari** (Qatar), speaking on behalf of the Group of 77 and China, said that a strong system of administration of justice in the Secretariat, combined with effective accountability mechanisms, was a prerequisite for efficient human resources management and harmonious staff-management relations. All staff members had the right to a fair and transparent internal justice system, in which impartiality was guaranteed. However, the current appeals process was slow and cumbersome, and improvements were overdue. Regrettably, the recent reform of human resources management had not resulted in a stronger internal justice system. Concrete reform proposals were needed. The Group therefore noted with appreciation

the recommendations of the Joint Inspection Unit in that regard.

14. The Group had looked forward with great interest to the consideration of the question of the administration of justice at the United Nations. However, the Committee had been unable to take up the item as scheduled because of the late issuance of the relevant documentation. Moreover, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) had not been able to submit a report owing to the lack of clear information from the Secretariat on the resources needed to strengthen the internal justice system. The Group noted that, in order to give full consideration to the reform proposals, it was necessary to have a clear picture of the related resource requirements.

15. **Mr. Elkhuizen** (Netherlands), speaking on behalf of the European Union, said that the way justice was administered within the Organization had a significant impact on staff morale and productivity. The European Union therefore attached much importance to strengthening the administration of justice as a way of enhancing transparency within the Organization and improving the relationship between the staff and management.

16. The main problems were the amount of time taken to administer the process; the imbalance of resources available to the staff member (the appellant) and to the Organization (the respondent); and the concentration of responsibilities in the Department of Management, which could be seen as a conflict of interest. A more efficient system of justice would do away with the perceived inequality. The European Union would therefore carefully analyse the proposals aimed at harmonizing the statutes of the United Nations Administrative Tribunal and the International Labour Organization (ILO) Administrative Tribunal as a first step towards attaining that objective. In order to take any decision, however, the Committee needed to hear a clear proposal from the Secretariat as to the resources needed. The European Union therefore welcomed the suggestion that an addendum should be issued to the Secretary-General's report (A/59/449) setting out the requirements for the administration of the internal justice system. Given the time constraints, it would be appropriate to consider the item at the next resumed session.

17. **Mr. Kendall** (Argentina) said that the Secretariat was the backbone of the United Nations, bearing the load of the Organization's day-to-day work. It was therefore essential to ensure that the staff enjoyed the best possible legal guarantees. The report of the Office of Internal Oversight Services (A/59/408) was most useful, especially in its comparison between the various duty stations. His delegation supported a number of the recommendations contained in the report, especially those relating to the need to ensure equal resources for respondents and appellants. The report of the Joint Inspection Unit (A/59/280) was also interesting, although it was still premature to consider establishing a single administrative tribunal for the whole of the United Nations system. Before that happened, it was important to have more information on the compatibility of the various procedures and practices, as well as a cost-benefit analysis of harmonization.

18. As for compensation for members of the Administrative Tribunal, his delegation believed that, in view of the fact that the composition of the Tribunal had been brought closer to that of the ILO Administrative Tribunal, the honorarium of its members should, as suggested in the Secretary-General's report (A/C.5/59/12), be increased. His delegation also concurred with the proposal contained in the Secretary-General's report (A/59/78) that resources relating to the Administrative Tribunal should be transferred to Section 1, Overall policy-making, direction and coordination. His delegation looked forward to the report and proposals of the Advisory Committee, once the information on additional resources for the administration of justice had been analysed and the Committee had held a meeting with the ILO Administrative Tribunal.

19. **Mr. Muhith** (Bangladesh) said that a competent human resource management system was crucial for staff morale and productivity. It was therefore a matter for concern that the long-mooted overhaul of the administration of justice had yet to be addressed in a manner that would have a real effect on the backlog and the existing cumbersome system. Real reform was needed. It appeared from the Secretary-General's report (A/59/449) that the chronic delays and inefficiencies were largely caused by inadequate resources, especially with regard to staffing and training. Practical proposals should therefore be made by the Secretariat as soon as possible so that the

Advisory Committee could make the necessary recommendations for action to deal with the matter without further delay.

20. **Mr. Berti Oliva** (Cuba) said that ensuring the right of the staff to a transparent and impartial legal justice system would help the Organization to function better and make it more credible. The current serious situation should not be allowed to persist. The United Nations had never had a proper appeals system and his delegation would have preferred to see reforms to the administration of justice go hand in hand with those to human resource management. It was inequitable to continue strengthening the powers of the Administration at the expense of the staff. It was deplorable that no substantial improvements had been made, despite repeated appeals by the General Assembly.

21. The delay in issuing a number of documents relating to the agenda item under consideration — and many others — was unacceptable, since it had made it impossible to carry out a serious and detailed analysis of the question. It was also a matter for concern that the Advisory Committee had not yet submitted its report; there seemed to be no good reason for the delay. His delegation would wait until it received the report before making any further statement.

22. **Mr. Elji** (Syrian Arab Republic) said that his delegation had repeatedly emphasized that human resources management reform must be accompanied by reform of the internal justice system. In that connection, he noted the General Assembly's decision to devote a separate agenda item to the administration of justice at the United Nations and its wish to consider the item on an annual basis. Given the importance of the question, the late issuance of the relevant documentation was very regrettable. Moreover, many of the reports simply reproduced in extenso the content of previous reports.

23. It was the right of every staff member to have access to a fair and transparent internal justice system. Currently, the appeals process consisted of several stages: staff members wishing to contest a decision must submit a request for administrative review before they could file an appeal with the Joint Appeals Board, and they had no access to the United Nations Administrative Tribunal until their case had been disposed of by the Board. While the judgements of the Tribunal were rendered relatively quickly, his delegation was deeply concerned about the delays in the other stages of the process for deficiencies in the internal justice system adversely affected staff morale. His delegation would comment further on the matter when all the relevant reports were available.

24. **Ms. Udo** (Nigeria) said that her delegation attached great importance to the administration of justice at the United Nations. She recalled that the General Assembly, at its fifty-seventh session, had described the internal justice system as slow and cumbersome. Regrettably, little had changed in the past two years. As the Office of Internal Oversight Services (OIOS) had stated, the appeals process should be streamlined to make it shorter. Her delegation had taken note of the Office's proposals in that regard and would discuss them in detail at the appropriate time.

25. The administration of justice at the United Nations deserved serious consideration by the Committee. However, the relevant documentation had been received very late, and the Advisory Committee had not had all the information it required for thorough consideration of the question. She stressed that human resources management reform would not be complete until the crucial issue of the administration of justice, which touched on the lives of staff members, was addressed in a comprehensive manner, and she asked how many more years would be allowed to elapse before that occurred.

26. The questions of accountability, transparency and measures to mitigate conflicts of interest also merited serious attention. Her delegation had noted the Advisory Committee's intention to revert to those matters when it received the submission requested from the Secretariat. In the interim, it would appreciate information on the number of requests for administrative review and the number of appeals filed with the Joint Appeals Board. Lastly, it trusted that, when the Advisory Committee was finally in a position to submit its report on the item, an opportunity would be provided for delegations to comment on it.

27. **Mr. Krinshpun** (United States of America) said that his delegation wished to align itself with the statement made by the representative of the Netherlands on behalf of the European Union. While it attached great importance to the administration of justice at the United Nations, it would not make a formal statement on the item prior to the issuance of the Advisory Committee's report.

28. **Ms. Axenidou** (Department of Management), replying to the questions raised, said that 103 requests for administrative review had been submitted in 2001, 132 in 2002 and 247 in 2003, while 115 appeals had been filed with the Joint Appeals Boards in New York, Geneva, Vienna and Nairobi in 2001, 159 in 2002 and 145 in 2003.

29. **Ms. Udo** (Nigeria) said that it would be helpful to have that information in writing. She would also appreciate an indication of the nature of the decisions contested, as well as statistics for 2004.

30. **Ms. Axenidou** (Department of Management) said that, pursuant to General Assembly resolution 55/258, the Secretary-General reported to the Assembly annually on the number of appeals filed and disposed of in the previous year. The report on the outcome of the work of the Joint Appeals Board during 2004 would be finalized in early 2005. It would not be meaningful to provide data for 2004 before the end of the year, since in general more appeals were filed in December than in any other month.

31. **The Chairman** said that he would arrange for the responses given to be circulated in writing.

32. **Mr. Fiji** (Syrian Arab Republic) said that his delegation, too, wished to have figures for 2004, even if they were only approximate. It also wished to know how many of the appeals disposed of by the Joint Appeals Boards had been decided in favour of the staff and what percentage of the Board's recommendations in such cases had been accepted by the Secretary-General.

Organization of work

33. **The Chairman** said that the Committee was under great pressure of time. Several matters on the agenda remained outstanding. In addition, the following week, the Committee would have to consider a large number of reports and other documents relating to the programme budget. He therefore wished to request members to pursue consultations on the outstanding matters in informal informals in order to expedite the Committee's work.

34. **Mr. Al-Ansari** (Qatar), speaking on behalf of the Group of 77 and China, expressed concern that some reports would only be issued at the end of the main part of the session. The Group was not convinced by the explanations given for the late issuance of the reports because many were considered on an annual basis. It was regrettable that the Secretariat was issuing documents without any regard for the time constraints under which the Committee was operating or the relevant resolutions of the General Assembly. While the Group believed that the Committee should complete its consideration of all the items allocated to it, it recognized that that might not be possible. With respect to the holding of informal informals, it wished to emphasize that they should not overlap or take place in parallel with other meetings of the Committee. They should be listed in the *Journal of the United Nations*, so as to ensure the widest possible participation, and conference services should be provided if participants so requested. Any agreement reached in informal informals would need to be reviewed in a more formal setting.

35. **Mr. Abelian** (Secretary of the Committee) said that, in a number of cases, reports had yet to be issued because of circumstances beyond the Secretariat's control. For example, while the budget outline had been issued more than one month earlier, the Advisory Committee had yet to consider it. It was waiting until the end of November, as it always did, in order to have the most accurate forecasts of inflation and exchange rates for the United States dollar. Likewise, the Advisory Committee still had to consider a number of statements of programme budget implications; the Main Committees of the General Assembly had until 1 December 2004 to submit them. The Secretariat could, of course, list informal informals in the *Journal*, but it would need the agreement of the entire Committee to do so. The provision of conference services for informal informals would be problematic, since there would be programme budget implications. Moreover, pursuant to a decision of the General Assembly, with a few exceptions, meetings at Headquarters were no longer serviced after 6 p.m. He would discuss the matter with the Department for General Assembly and Conference Management.

36. **The Chairman** said that there would be an additional opportunity for reflection on any agreement reached in informal informals. While it was important for members to be flexible, he would ensure that no delegation would be disadvantaged as a result of the holding of informal informals. The late issuance of documentation had plagued the Committee throughout the session. Indeed, the Bureau had at first little control over the programme of work, which had been dictated

by the availability, or lack of availability, of documentation. He wished to emphasize, however, that the Committee secretariat had done everything possible to facilitate the smooth functioning of the Committee's work, notwithstanding those difficulties.

The meeting rose at 11.35 a.m.